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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,194	10/20/2003	Triveni P. Shukla	00030-001	4436

7590 11/30/2004
Timothy J. Fullin
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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,194

Applicant(s)

SHUKLA ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed Sept. 2, 2004, applicant amends the claims to include the limitation " wherein the dietary fiber gel comprises insoluble dietary fiber". This limitation is not supported by the original disclosure or claims. The specification does not disclose anywhere that the gel comprises insoluble dietary fiber.

The amendment filed Sept. 2 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The insertion on page 2 starting at line 30 of " structures that are largely amorphous in nature". " Dietary fiber gel can include insoluble dietary fiber that can exist in the hydrated form as a gel or in the dehydrated form as flakes or powders".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claims 1-2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention,

Applicant claims cookies and cookie dough comprising an emulsified liquid shortening composition; the composition comprises dietary fiber gel. The gel is an essential element to the composition; however, the specification does not teach how to form the gel or how the gel is mixed with water and lipid to form the emulsified liquid shortening composition. How much water and lipid are needed? What kind of lipid can be used? There is no disclosure of how the gel is made and how the shortening composition is made. There is disclosure of what cookie formulation or dough to use. One skilled in the art would not know how to make the composition and cookie from reading the specification.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al in view of Stone and Leitz et al.

Young et al disclose a bakery shortening substitute. The shortening substitute may be an oil-in-water emulsion or water-in-oil emulsion. The emulsion comprises water, konjac gel and lipid. Other hydrocolloids are included in the konjac gel. Highly preferred combination is konjac with microcrystalline cellulose. The shortening can replace shortening and other conventional fats in bakery food formulations on a one-to-one volume basis. The shortening substitute is used in cookies. (see col. 3 lines 7-13, col. 6 lines 40-45, col. 9 lines 19-39, col. 11 lines 1-31)

Young et al do not disclose the amount of solid delivered by the fiber gel.

Stone teaches konjac is a soluble dietary fiber. (col. 2 line 28)

Leitz et al disclose microcrystalline cellulose is an insoluble fiber. (see col. 5 lines 28-30)

While Young et al do not use the term dietary fiber gel, the konjac gel is a dietary fiber gel because konjac is a soluble dietary fiber as shown by Stone. The gel comprises microcrystalline cellulose which is shown by Leitz et al to be an insoluble fiber. Thus, the gel comprises insoluble fiber which meets the claimed limitation. As to the amount, Young et al teach the shortening substitute can replace the fat in conventional formulations on a one-to-one basis; thus, the amount of solid in the fiber gel can vary depending on the cookie formulation and the amount of fat present in such formulation. It would have been obvious to one skilled in the art to use any known cookie formulation depending on the taste, flavor and texture desired.

Applicant's arguments with respect to claims 1-2 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 24, 2004


LIEN TRAN
PRIMARY EXAMINER
